

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4057 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ARVINDBHAI P PATEL

Versus

PATEL NARANBHAI MAGANDAS

Appearance:

MR MI PATEL for Petitioner

Naranbhai Magandas Patel-party -in person -Respondent No. 1

Mr.D.N.Patel, Asstt. Govt.Pleader for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/01/99

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution the petitioner has prayed for quashing and setting aside the order dated 3-4-1984 (Annexure D) passed by the Secretary (Appeals), Revenue Department of the State Government by which the State Government cancelled the order dated 28-5-1976 of the Asstt.

Collector, Mehsana granting the petitioner the land admeasuring 24 gunthas in S.No. 2222 in Village Thod, taluka Kadi District Mehsana.

2. By the aforesaid order dated 28-5-1976 the Assistant Collector had granted the above land to the petitioner subject to certain conditions. Respondent no.1 herein, who happens to be uncle of the petitioner, challenged the said order by filing revision application in the year 1982 before the Collector. The Collector dismissed the said revision application on the ground that it was time barred and filed beyond reasonable period. Respondent No.1 therefore, carried the matter in revision before the State Government and after hearing the parties the Secretary (Appeals) allowed the revision and set aside the order of the Assistant Collector granting the land to the petitioner as well as the revisional order passed by the Collector. The Secretary set aside the order of grant mainly on the following ground:

- (1). The original order of grant dated 28-5-1976 was not served upon respondeat no.1 nor respondent no.1 was a party to the proceedings and therefore, respondent no.1 filed the revision before the Collector only when he came to know about the order when dispute arose between the parties. Hence the order of grant was not challenged by respondent no.1 beyond reasonable time.
- (2). On merit it was held that the land in question was a village pond land (Talavadi) and the grant was not consistent with the Government policy. As per the Government policy the Government wasteland is to be granted to the needy persons but the person herein was residing away from the village and was not carrying on any agricultural activity.
- (3). The petitioner's father had made partial partition of his agricultural lands in order to enable the petitioner to obtain the grant of the land in question.
- (4). There were other needy persons whose cases could have been considered while granting the land to the petitioner.
- (5). The dispute between the parties was also pending

before the Civil Court.

3. The Civil Suit is already disposed of as the same was dismissed on account of non-prosecution but the learned Counsel for the petitioner states that the suit was filed in respect of a different cause of action and the cause of action for filing the present petition is different as the order of the Secretary cancelling the grant in favour of the petitioner was not the subject matter of the suit.

4. At the hearing of this petition, learned Counsel for the petitioner submitted that the grounds given by the Secretary were not at all germane to the controversy at hand. The dispute is raised by the petitioner's uncle respondent herein on account of the oblique motive and to harass the petitioner and that respondent no.1 himself has obtained grant of similar land in the same village on the same year i.e. 19-11-1976 (Annexure B). It is submitted that when the land was allotted to the petitioner way back in 1976, the Collector rightly dismissed the revision application as the same was required to be preferred within reasonable time. On merits, it is submitted that the petitioner was residing in the village at the relevant time and there was nothing wrong with the grant of the land in question. The learned Counsel also attempted to raise other contentions also.

5. On the other hand, Patel Naranbhai Magandas respondent no.1 herein has appeared in person and opposed the petition. He submitted that the land in question was a village pond land and that the same was necessary to be kept as a village pond (Talavadi).

6. Having heard the learned Counsel for the parties and the party in person, it appears to the Court that the petition raises various disputed question of facts as well as the questions as to whether the grant of the land in question was consistent with the Government policy at the relevant time. Looking to the nature of the controversy between the parties and also looking to the fact that the interest of other village people may also be involved, it appears to the Court that the interest of justice would be met if the following directions are given while disposing of this petition:

(1). The order dated 3-4-1984 of the Secretary (Appeals) is set aside and the matter is remanded to the Collector, Mehsana for deciding the

question about the legality and validity of the grant of the land in question to the petitioner as per the order dated 28-5-1976.

(2). The Collector, Mehsana, shall decide the aforesaid issue on merit and in accordance with law without considering any objection on the ground of delay in initiating the proceedings but the Collector shall decide the matter after getting notice published in the news-papers having wide circulation in the area and also through the village panchayat inviting the objections, if any, to the grant of the land in question and if at all the Collector considers that the grant of the land would not be contrary to public interest the Collector may also consider whether to invite applications from other needy village people.

(3). It will be open to respondent no.1 to appear before the Collector and to make his submissions on the question of grant of land in question as also the grant of land in question to the petitioner.

(4). Till the Collector decides the matter afresh as aforesaid, status quo as on today regarding the land in question shall continue.

(5). In the facts and circumstances of the case the petitioner shall pay the cost of respondent no.1 for these proceedings, which are quantified at Rs.2000/-. The amount shall be paid to respondent no.1 within one month from today by an account payee cheque to be sent by registered post at the address of respondent no.1 as stated in this petition. If the amount as aforesaid is not paid to respondent no.1 by the petitioner within the aforesaid time limit, the Collector shall not consider the petitioner's case on merits.

7. This petition is accordingly disposed of in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent only.

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